BOOK REVIEWS.

GEORGE W. JAQUES, *Editor-in-Charge.*

LAW AND CUSTOM OF THE CONSTITUTION. By SIR WILLIAM R. ANSON, BART. 3 volumes. Vol. I: Parliament. 4th ed. Oxford: HENRY FROWDE. 1909. pp. xxvi, 404.

The fourth edition of Anson's Law and Custom of the Constitution follows the general plan of the first edition which was published almost a quarter of a century ago and has well served many generations of Oxford students who fain would master the mysteries of that imposing legal fabric. Very few pages have been added to the text as it stood in the last reprint, for the broad outlines of English institutions have remained unaltered since the electoral reforms of 1885. Nevertheless, Sir William has had to record the fact that changes even more significant than those in mere legal framework have been made in the operations of parliamentary machinery—changes recorded in the works of Low, Redlich, and Lowell, to whom our author pays just tribute. In fact, substantially all of the new matter which has been added to the volume before us relates to the recent developments in English parliamentary procedure—developments which seem technical and trivial to the careless observer looking for the spectacular in politics, but which go to the very roots of government and often twist legal framework all out of joint. Whoever feels quickened to join in the attack on Speaker Cannon and the Rules Committee will do well to ponder first upon Sir William's revised pages on the process of legislation (pp. 240-300) where he will learn how the English cabinet has been forced by the sheer pressure of legislative business to adopt the closure and guillotine. American students who last summer watched the waxing power of the Senate (in spite of the fact that revenue bills must originate in the House of Representatives) will discover in Sir William's new edition how the upper house will inevitably grow as the lower house ceases to be a free deliberative assembly. The other features of this work remain as they were originally planned and the student who would know the composition of the English parliament, the complicated qualifications on the suffrage, the privileges of the two legislative houses, the outlines of parliamentary procedure, the relations of the legislature and the executive, and the judicial functions of the high court of Parliament will find this compendium clear, manageable, and authoritative.

C. A. B.

A TREATISE ON THE LAW OF INTERCORPORATE RELATIONS. By WALTER CHADWICK NOYES. Boston: LITTLE, BROWN & COMPANY. 1909. pp. lx, 924.

The first edition of this work, which appeared in 1902 was very justly reviewed in this magazine.[1] The reviewer, said, *inter alia,* "Judge Noyes' book is marked throughout by logical analysis, clear reasoning and scholarly preparation." "The noteworthy feature of

[1] 3 COLUMBIA LAW REVIEW 215.

the book, which distinguishes it from ordinary text books of law, is the accuracy with which it adheres to a logical plan and a high standard of clearness and conciseness." With these characterizations, the present reviewer is in perfect accord. Lawyers, legislators and the public owe a debt of gratitude to the writer on any phase of law who devotes such capable faculties as the author displays to the writing of an illuminating treatise, dedicating his ideas to the public instead of housing them up in a law firm, or exerting those faculties exclusively in the interests of a few clients. Especially is this true of a work which reduces to obvious order, the apparent chaos of so new and important a field of law.

In revising the first edition the author has noted numerous decisions rendered since it appeared, and it is believed that throughout the work these decisions are so incorporated in the text and notes as to present the equivalent of a wholly new writing. In the preface the author calls attention to the fact that the alterations and enlargements of the last six chapters have been so extensive as to necessitate new paragraph arrangement. These chapters deal with the topic of "Legislation Affecting Combinations," sub-divided as follows:—"The Federal Anti-Trust Statute;" "Its Constitutionality;" "Construction and Application;" "Rights, Remedies and Procedure," under it; "State Anti-Trust Statutes;" "Their Constitutionality;" their "Construction and Application;" "Rights, Remedies and Procedure under State Anti-Trust Statutes."

In the enlarged treatment of these topics, the author has exercised the same acumen, logic and clearness which characterized the first edition. Altogether 233 pages have been added.

Obviously a work in so new a field can not be beyond the criticism of learned readers, at every point. Even the present reviewer ventures to suggest some doubts. In discussing at length *ultra vires* sales of franchises, § 136 ff., and *ultra vires* railroad leases, § 239 ff., and particularly in § 242, and note, where the author approves a prevailing criticism of *St. Louis etc. R. R. Co.* v. *Terre Haute etc. R. R. Co.*[2] the lessor and lessee (vendor-vendee), where both are without express legislative authority, are regarded as *in pari delicto*. Hence on the point of disaffirmance the author states that, taken in connection with the language of the *Pullman Car Co.* cases,[3] the decision "in effect gives the lessee the exclusive right of repudiation, for if the lessor repudiates, he is, according to the decision, without remedy." It is submitted that the lessor and lessee are not *in pari delicto*, though to be sure Mr. Justice Gray does say they are. The lessor or vendor and the lessee or vendee of a franchise (without express legislative authority) are both not only acting *ultra vires*, but they are violating rules of public policy. So the author states,—and concludes that they are *in pari delicto*. But these rules of public policy are different in degree. The vendee is usurping a franchise and upon ouster proceedings would be ousted of the special franchise. The vendor, on the other hand, if proceeded against might be ousted of its primary franchise, to be a corporation. It is submitted that this is a case where the law is directed more strongly against the vendor or lessor, and that the rule of the *Terre Haute* case is at least not inconsistent with established principles.

[2](1891) 145 U. S. 393.

[3](1897) 171 U. S. 138; (1890) 139 U. S. 24.

The reviewer doubts whether sufficient care has been exercised in stating the result of the important case of *Loewe* v. *Lawlor*.[4] That decision is not rested upon the restraint placed by the combination upon the manufacture of goods *intended* for interstate shipment. Surely in view of the *Knight* case[5] such intent cannot make manufacture interstate commerce. Nor does the decision rest upon the restraint upon the sale *in general* in the States to which the goods were shipped or were to be shipped. The Act can reach only restraints upon sales of the articles so long only as they remain "articles in interstate commerce." It is only the *ensemble* of the acts alleged in the complaint in the *Lawlor* case that brought the restraint practiced by the defendants within the scope of the Act. The Court said, "If the purposes of the combination were, as alleged, to prevent any *interstate transportation* . . ." p. 301, and, "that at the time the alleged combination was formed they were in the process of manufacturing a large number of hats for the purpose of fulfilling engagements then actually made with consignees and wholesale dealers in States other than Connecticut . . ." p. 304.

Not the least interesting portions of the treatise, though merely incidental, are the suggestions of amendments to the anti-trust laws at pp. 709, 738, note, and at p. 784, note. Particularly the last, where the author says, "the regulation of commerce may consist in the *imposition* as well as in the removal of restraint. If the present statute [Federal Anti-Trust Law] prove insufficient, it may be necessary to place limitations upon interstate commerce." As an illustration of the necessity for such legislation the case is put of a large manufacturer outside the State shipping in at cut prices to destroy a small competitor operating wholly within the State. State legislation can not reach the evil, because a State can not interfere with interstate commerce; and, since there is no restraint of *interstate* commerce here practiced the evil is not within the Federal Act. Obviously what is needed *is a restraint* upon interstate commerce to prevent its use as an instrument for the destruction of competition.

It is apparent from the isolated character of the points criticized that the reviewer has found very little to take issue with. In truth, this treatise exhibits the careful thought, clearly stated, of a strong mind that has gone far toward the mastery of the very important and difficult subject treated. Absolute mastery is an oft-demonstrated impossibility. It is hoped, however, that the author will strive in pursuit of it, and will give the public and the profession further cause for gratitude for his work in his chosen field.

D. O. McG.

THE LAW OF GUARANTY INSURANCE. By THOMAS GOLD FROST. 2nd ed. Boston: LITTLE, BROWN & CO. 1909. pp. liv, 802.

The rapid development of the law affecting the various forms of compensated suretyship has made imperative a revision of the first edition of this treatise published in 1902.[1] The scope of the new edition is substantially that of the first edition. Bringing the work down to date, however, has involved the addition of recent decisions of the extent of five hundred and over and the addition of about two hundred

[4](1907) 208 U. S. 274.

[5](1894) 156 U. S. 1.

[1]Reviewed, 2 COLUMBIA LAW REVIEW 433.